IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

WP(C).No. 25701 of 2006(I)

PETITIONER:

P. ACHUTHAN NAIR,
PARAPPUR HOUSE, P.O. THACHINGANADAM,
PATTIKADU, MALAPPURAM DIST.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.T.R.SADEESAN
SRI.K.A.SUJAN

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVT.,
GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

3. THE DIST. EDUCATIONAL OFFICER,
MALAPPURAM.

4. THE MANAGER,
THACHINGANADAM HIGH SCHOOL, THACHINGANADAM,
MALAPPURAM.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.IMTHIYAZ AHAMED
SRI.SHIRAX ABDULLA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : COPY OF THE GOVT. ORDER NO.G.O.(RT) NO.1843/06/G.EDN. DATED 6.5.2006 PASSED BY THE 1ST RESPONDENT.

EXT. P2 : COPY OF THE REVIEW PETITION DATED 17.8.2006 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

K.M.JOSEPH, J.

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WP.(C) No. 25701 OF 2006

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Dated this the 20th day of November, 2006

JUDGMENT

Case of the petitioner in brief is as follows:

Thachinganadam High School is an Aided School under the KER. There is a Trust with bye-laws provided by the Department. Petitioner was elected as President on 2.9.2000. He was again elected on 29.3.2004 till 31.3.2005. Government ordered taking over of the School under Section 14 of the Act, which came to be challenged in W.P.(C) 16961 of 2005. That writ petition was disposed of quashing the order and directing the Government to take a fresh decision with notice to the petitioner, respondent No.5 and other concerned parties. Complaint of the petitioner is that Ext.P1 order was issued without hearing him. Petitioner has filed Ext.P2, which is purported to be under Rule 93 of Chapter XIVA KER. It is stated that it is not being disposed of. It is stated that the review petition is numbered. Since grave injustice has been done to the School, it is just that Ext.P2 review is considered and disposed of without further delay. Prayer sought in the writ petition is to direct the first respondent to dispose of

Ext.P2 with notice and opportunity of hearing to the petitioner and other affected parties without any further delay.

2. Counter affidavit is filed by the fourth respondent raising various contentions, including the following:

> "The main subject matter of the review petition, it is submitted, is alien to the order passed by Government, which is sought to be reviewed. The sale of the right regarding the School looms large in the review petition. Apart from the fact that a review of Ext.P1 Government Order is not competent under any provision of the Kerala Education Rules, the review sought on the basis of the sale is incompetent, because nothing concerning the sale can be considered to be an error apparent on the face of the record, in Ext.P1 order. In any view of the matter, the review petition was time-barred.
>
> The petitioner herein seems to be labouring under an abject misapprehension. The petitioner has shown a tendency to hide real and relevant facts. The writ petition, it is submitted lacks bona fide.
>
> The petitioner avers that he had no notice of Ext.P1. For that matter, this respondent understands and believes it to be true that Ext.P1 was not passed with any notice to any of the parties. After remand on the question of taking over

under Section 14, Government heard all parties, including the petitioner, as directed by this Hon'ble Court. Before Government, at that stage, the parties consented to a reference to the District Educational Officer. The petitioner herein was a party to that consent order. Thereafter the District Educational Officer, Malappuram convened the meeting but the petitioner did not co-operate. He appeared through an Advocate, the latter raised an objection that the D.E.O. Malappuram had no jurisdiction to hear or decide the matter, and staged a walk-out. He alone is to be blamed for that. Ext.P1 final order was passed by Government pursuant to the direction in the writ petition. For passing Ext.P1 order, nobody need be heard. There was already a consent order passed by the Government. The above facts are gathered by this respondent from his assignors."

3. I heard learned counsel for the petitioner and the learned Senior Counsel appearing on behalf of the fourth respondent, besides learned Government Pleader. I feel that the petitioner is entitled to an order directing the first respondent to consider and take a decision on Ext.P2 in accordance with law.

The writ petition is disposed of directing the first respondent to

consider and take a decision on Ext.P2 in accordance with law. I make it clear that it is open to the fourth respondent to raise the contention that Ext.P2 is not maintainable in law. It is also open to the fourth respondent to raise all the contentions referred to in the counter affidavit. Needless to say, the first respondent shall hear the petitioner, fourth respondent and any other affected party before a decision is taken. The decision as aforesaid shall be taken within a period of two months from the date of production of a copy of this judgment.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.